IN THE HIGH COURT OF JUDICATURE OF
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MR. JUSTICE D.APPA RAO

WRIT PETITION NO. 3127 OF 2007

Dated : September 11, 2007

Between:

The Engineer-in-Chief,
Irrigation & CAD (Administration Wing) Department,
Yerrammanzil, Hyderabad and others.

Petitioners

AND

M.B. Rajendra Prasad

Respondent

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MR. JUSTICE D.APPA RAO

WRIT PETITION NO. 3127 OF 2007

ORAL ORDER: **(per THE HON'BLE MRS. JUSTICE T.MEENA KUMARI)**

Seeking a writ of certiorari to call for the records

relating to the order dated 30.09.2004 passed in O.A. No. 7482 of 1999 on the file of the Andhra Pradesh Administrative Tribunal, Hyderabad, and to quash the same as perverse and illegal, the petitioners filed this writ petition.

The respondent herein filed the above O.A. before the Tribunal assailing proceedings of the first petitioner dated 17.2.1999, imposing a punishment of stoppage of one increment without cumulative effect and treating the period of unauthorised absence as dies non.

The facts, in brief, are that the respondent while working as Assistant Executive Engineer in YRPC Circle, Kakinada, was transferred and posted to NSRC (CADA) Unit, but the respondent did not join and proceeded on leave from 20.8.1994 without prior permission or sanction of leave. However, a minor punishment of stoppage of one increment without cumulative effect was imposed on the respondent besides treating the period of absence from 20.8.1994 to 15.5.1997 as *Dies Non* by proceedings dated 17.2.1999.

Assailing the same, the petitioner filed the above O.A. and the Tribunal, by order dated 30.9.2004 held that there is no wilful absence on the part of the respondent from duty and there is no reason also to hold that the absence of the respondent is deliberate and wanton and is wilful, as these periods are covered either by the leave

or by the proposed deputation or by any zonal transfer, which is not permissible and, therefore, the impugned proceedings to the extent of imposing a punishment of stoppage of one increment without cumulative effect treating the period of absence as *Dies Non* is set aside and allowed the O.A.

Aggrieved by the said order passed by the Tribunal, the petitioners – Department has filed this writ petition contending that in terms of FR-67, leave cannot be claimed as a matter of right. It is also contended that in terms of Note 1 of FR 18, wilful absence from duty not covered by grant of any leave, will be treated as a *Dies Non* for all purposes and, therefore, the order passed by the Tribunal is liable to be set aside.

The learned counsel for the respondent – employee vehemently tried to support the impugned order contending from time to time, the respondent had been asking for posting and in the leave application dated 1.10.1994, submitted consequent upon expiry of the leave applied for from 20.8.1994 to 30.9.1994, the respondent clearly stated that till he gets posting orders, the period shall be treated as leave and, therefore, the absence of the respondent cannot be termed as unauthorised absence.

We have gone through the impugned order. The observation of the Tribunal that there is no wilful absence

on the part of the applicant – respondent from duty and there is no reason also to hold that his absence is deliberate and wanton and is wilful, as the periods are covered either by leave or by the proposed deputation or by any zonal transfer, is not support by any evidence. Therefore, there is no basis for the Tribunal to record such a finding. The observation given by the Tribunal that the period of absence is either covered by leave or by proposed deputation, is not born out by any record. It is need less to say that the leave cannot be claimed as a matter of right and, therefore, until leave applied is granted, the period for which an employee abstains from duty, shall be treated as unauthorised absence and, therefore, any wilful absence from duty not covered by any grant of leave, will be treated as dies non. Accordingly, we set aside the finding recorded by the Tribunal and dismiss the O.A.

Consequently, the Writ Petition is allowed but, however, no order as to costs.

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T.MEENA KUMARI, J.

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D.APPA RAO, J.

September 11, 2007
MAS